REMARKS

Claims 1-2, 5, 9, 11-16 and 18-21 are pending in this application after this amendment. New claim 21 is presented for consideration by the Examiner. No new matter has been added by the addition of new claim 21. Based on amendments and remarks made herein, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections.

By this amendment, Applicants have amended the claims to more appropriately recite the claimed invention. It is respectfully submitted that these amendments are being made without conceding the propriety of the Examiner's rejections, but merely to timely advance prosecution of the present application.

In the outstanding Official Action, the Examiner rejected claims 1-2, 13-15 and 18-20 under 35 U.S.C. §103(a) as being unpatentable over Kowald (U.S. Patent Application Publication No. 2003/00027151) in view of Khan (U.S. Patent Application Publication No. 2003/0126121); rejected claims 5, 9 and 11 under 35 U.S.C. §103(a) as being unpatentable over Kowald in view of Khan and further in view of Bhatt (U.S. Patent Application Publication No. 2002/0118883); rejected claim 12 under 35 U.S.C. §103(a) as being unpatentable over Kowald in view of Khan and further in view of Sano (USP 6,079,885); and rejected claim 16 under 35 U.S.C. §103(a) as being unpatentable over Kowald in view of Khan and further in view of Tsukagoshi (USP 5,848,217). Applicants respectfully traverse these rejections.

Examiner Interview

Applicants wish to thank the Examiner and his Supervisor for the Interview conducted on November 12, 2008. During the Interview, the parties discussed the differences between the art of record and Applicants' invention. The amendments and arguments presented herein are made further to the discussion during the Interview.

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Claim Rejections- 35 U.S.C. § 103

By this amendment, Applicants have amended claim 1 to recite, *inter alia*, a photographic image selecting apparatus comprising a classifying means for classifying a plurality of photographic images into similar photographic image groups, comprising photographic images which are similar to each other, the similarities being determined by analyzing digital data representing the photographic images; and a qualified photographic image extracting means for extracting photographic images, that satisfy **previously stored predetermined selection conditions** as qualified photographic images, from each of the similar photographic image groups, wherein the **previously stored predetermined selection conditions relate to image quality**.

In support of his rejection of the claim, the Examiner relies on the teachings of Kowald to teach the classifying means and the qualified photographic image extracting means. Applicants respectfully submit that the teachings of Kowald are wholly insufficient to teach or suggest the qualitifed photographic image extracting means as recited in claim 1.

During the Interview, the Examiner indicated that he was interpreting the classification system 522 and the classifications (meta data) 524 as the classifying means. As discussed with regard to these elements, Kowald discloses performing content analysis to analyze the images and add meta data indicative of the content to the image.

Kowald further discloses in paragraph [0048] as follows:

> Editing performed by the editing system 514 may operate using the classifications 524 in a variety of ways. **For example, the user may wish to commence an image sequence with a long shot, and hence may enter into the system 514 a request for all long shots to be listed. The system 514 then interrogates the store 526 to form a pick-list of images that have been previously classified as a long shot.** The user may then select a long shot from the list to commence the edited sequence. The classification thus substantially reduces the user's editing time by providing a ready source of searchable information regarding each image or shot sequence. Another example is where the user wishes to show the emotion "fear" in the faces of the subjects. Since faces are typically not detected in any significant detail for anything under a medium shot, a search

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of the store 526 may be made for all medium shots, close-ups and extreme close-ups. **A corresponding pick list results from which the user can conveniently review a generally smaller number of images than the total number available to determine those that show "fear".** User entered metadata such as "fear" may then supplement the automatically generated classification for those images that display such an emotion.

As can be seen from this disclosure, the system provides for a user to request a group based on the meta data provided in the classification stage ("**For example, the user may wish to commence an image sequence with a long shot, and hence may enter into the system 514 a request for all long shots to be listed**"). The **user** may then select images from the request result in order to get a smaller number of images ("**The system 514 then interrogates the store 526 to form a pick-list of images that have been previously classified as a long shot.**"). As such, the pick-list is the list of all of the images that satisfy the request for all long shot images. "The **user** may then select a long shot from the list to commence the edited sequence. The classification thus substantially reduces the user's editing time by providing a ready source of searchable information regarding each image or shot sequence."

In contrast, claim 1, as amended, requires a qualified photographic image extracting means for extracting photographic images that satisfy **previously stored predetermined selection conditions** as qualified photographic images, from each of the similar photographic image groups, wherein the **previously stored predetermined selection conditions relate to image quality**. According to the disclosure of Kowald, the **user** reviews all of the images that satisfy the "long shot" request and selects an image.

As the user is reviewing the whole set of images satisfying the search result and selecting images from the whole set of images, Applicants maintain that these teachings are insufficient to teach or suggest **previously stored predetermined selection conditions**. Further there is no disclosure that is directed to extracting photographic images that satisfy **previously stored predetermined selection conditions** as qualified photographic images, from each of the similar photographic image groups, wherein the **previously stored predetermined selection conditions relate to image quality**.

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Khan fails to cure the deficiencies of the teachings of Kowald by failing to teach or suggest these claim elements. For at least this reason, Applicants maintain that claim 1, as amended, is not obvious over the references as cited. It is respectfully requested that the outstanding rejection be withdrawn.

It is respectfully submitted that claims 2, 5, 9, 11-17 and 19-20 are allowable for the reasons set forth above with regard to claim 1 at least based on their dependency on claim 1. It is further respectfully submitted that claim 18 includes elements similar to those discussed above with regard to claim 1 and thus claim 18 is allowable for the reasons set forth above with regard to claim 1.

By this amendment, Applicants have added new claim 21 for consideration by the Examiner. Claim 21, recites, *inter alia*, a method for selecting photographic images, comprising classifying a plurality of photographic images into similar photographic image groups, each of the photographic image groups comprising photographic images which are similar to each other, the similarities being determined by analyzing digital data representing the photographic images; determining the total number of photographic images in each of the photographic image groups; and **setting selection conditions based on image quality for each similar photographic image group having the classified plurality of photographic images based on the determined total number of photographic images**, wherein when a total number of photographic images in one photographic group is larger than a predetermined threshold, the selection conditions are different than the selection conditions that are set for photographic groups having less than the predetermined threshold.

The Examiner relies on Khan to teach this claim element. However, Khan merely discloses a user being able to select a predetermined number of top matches. This teaching, however, does not teach or suggest setting selection conditions based on image quality (As noted above, Kowald further fails to teach or suggest this claim element.). Further, Khan fails to teach or suggest setting selection conditions that are different than the selection conditions for groups having less than the predetermined threshold.

For at least this reason, Applicants maintain that claim 21 is not obvious over the references as cited.

Conclusion

In view of the above amendment and remarks, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Catherine M. Voisinet Reg. No. 52,327 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: November 20, 2008   Respectfully submitted,

                                         By _____
                                         Marc S. Weiner
                                         Registration No.: 32,181
                                         BIRCH, STEWART, KOLASCH & BIRCH, LLP
                                         8110 Gatehouse Road
                                         Suite 100 East
                                         P.O. Box 747
                                         Falls Church, Virginia 22040-0747
                                         (703) 205-8000
                                         Attorney for Applicants